

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

INA STEINER, DAVID STEINER, and
STEINER ASSOCIATES, LLC,

Plaintiffs,

v.

EBAY INC., ET AL.,

Defendants.

CIVIL ACTION NO.: 1:21-CV-11181-PBS

**PROGRESSIVE F.O.R.C.E. CONCEPTS, LLC’S
MOTION FOR SUMMARY JUDGMENT**

Defendant Progressive F.O.R.C.E. Concepts, LLC (“PFC”), pursuant to Federal Rule of Civil Procedure 56, moves for summary judgment on the plaintiffs’ counts against it for Intentional Infliction of Emotional Distress (Count I), Negligent Infliction of Emotional Distress (Count II), Negligence (Count III), Negligent Supervision (Count VI), Negligent Retention (Count VII), violation of the Massachusetts Civil Rights Act (Count IX), Defamation (Count X), Trespass (Count XI), False Imprisonment (Count XII) and Civil Conspiracy (Count XIII).¹ PFC is entitled to judgment as a matter of law in its favor on all counts.

PFC is the only party in this case which never heard of the Steiners or EcommerceBytes until late August 2019 when the harassment campaign had concluded and the Natick police were investigating. PFC played no role in the harassment of the Steiners. PFC did not participate in the

¹ The claims for negligent supervision and negligent retention are direct claims while all other claims alleged vicarious liability. The only exception is Civil Conspiracy which alleges direct and vicarious liability.

harassment. PFC possessed no prior or contemporaneous knowledge of this clandestine, secretive and wholly unforeseeable criminal enterprise. PFC's lack of involvement and culpability was so clear and obvious that it was never contacted by local or federal law enforcement, never investigated, never asked to produce documents. PFC was not charged or claimed to have any role by law enforcement authorities. That is because PFC played no role in and had no knowledge of the harassment campaign.

Despite that, plaintiffs attempt to impose liability on PFC vicariously and directly. The vicarious liability claim is based on the actions of one embedded employee, Veronica Zea, who was already employed by eBay through another contractor prior to PFC taking over contract. PFC is entitled so summary judgment on all counts alleging vicarious liability for two separate reasons. First, it is indisputable that Ms. Zea was a borrowed-servant who fell under the absolute and sole supervision, direction and control of eBay thereby extinguishing PFC's vicarious liability as a matter of law. Second, the criminal conduct was not remotely within the scope of Zea's employment as a matter of law and, as such, no vicarious liability attaches to PFC.

The claims that PFC is otherwise directly liable also fail as a matter of law for two separate reasons. First, the plaintiffs have designated no expert testimony. The average juror, however, would not know what steps, if any, a security contractor would have been required to take by the applicable standard of care in their supervision or retention of Ms. Zea under the circumstances here given PFC's contractual obligations to eBay and with respect to an employee performing sensitive and secretive intelligence work, embedded in another company who was under the direction and control of that company, who's purchases using a company credit card were directed and authorized by her supervisor at that company. Second, the evidence demonstrates that PFC had no duty to supervise Ms. Zea and that the criminal enterprise was not reasonably foreseeable.

Respectfully submitted,
PROGRESSIVE F.O.R.C.E. CONCEPTS, LLC,
By Its Attorneys,

/s/ *Scott Douglas Burke*

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CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on October 28, 2024.

/s/ *Scott Douglas Burke*

Scott Douglas Burke